

# SENATE . . . . . No. 1569

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## The Commonwealth of Massachusetts

PRESENTED BY:

**Mr. Brewer**

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to strengthening family relationships through responsible shared parenting.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Mr. Brewer	Worcester, Hampden, Hampshire and Franklin
Robert A. O'Leary	Cape and Islands
Michael R. Knapik	Second Hampden and Hampshire
Todd M. Smola	1st Hampden
Richard J. Ross	9th Norfolk
Jason Lewis	31st Middlesex
Bruce E. Tarr	First Essex and Middlesex

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. S00811 OF 2007-2008.]

## **The Commonwealth of Massachusetts**

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**In the Year Two Thousand and Nine**

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### **AN ACT RELATIVE TO STRENGTHENING FAMILY RELATIONSHIPS THROUGH RESPONSIBLE SHARED PARENTING.**

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority  
of the same, as follows:*

1   SECTION 1. Chapter 208 of the General Laws, as appearing in the 2004 Official Edition, is  
2   hereby amended by striking out section 31 and inserting in place thereof the following section: -  
3   Section 31. For purposes of this section, the following words shall have the following meanings  
4   unless the context requires otherwise:  
5   “Parenting plan”, an implementation plan using the standardized parenting plan format, as  
6   approved by the chief justice of the probate and family courts, which shall include, setting forth  
7   the details of shared physical custody including, but not limited to, the child’s education; the  
8   child’s health care; procedures for resolving disputes between the parties with respect to child-  
9   raising and duties; and the periods of time during which each party will have the child reside  
10   with each parent, including holidays and vacations, or the procedure by which such periods of  
11   time shall be determined.

“Shared legal custody”, continued mutual responsibility and involvement by both parents in major decisions regarding the child’s welfare, including matters of education, medical care and emotional, moral and religious development.

“Shared physical custody”, a child shall reside equally with and be under the supervision of each parent for specified periods of time; provided, however, that physical custody shall be shared by the parents in such a way as to assure a child frequent and continued contact with both parents. The child is not required to reside with each parent for an equal amount of time during any given period.

“Sole legal custody”, one parent shall have the right and responsibility to make major decisions regarding the child’s welfare, including matters of education, medical care and emotional, moral and religious development.

“Sole physical custody”, a child shall reside with and be under the supervision of one parent, subject to reasonable visitation time by the other parent, unless the court determines that such visitation time would not be in the best interest of the child.

There shall be a rebuttable presumption that shared legal and shared physical custody is in the child’s best interest. In making an order of judgment relative to the custody of children, the rights of the parents shall, in the absence of misconduct, be held to be equal, and the happiness and welfare of the children shall determine custody. When considering the happiness and welfare of the child, the court shall consider whether or not the child’s present or past living conditions adversely affect the physical, mental, moral or emotional health of the child, and the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the child and the other parent. The court shall further consider the capacity and disposition of each parent to comply with the terms of the parenting plan.

35           Upon the filing of an action in accordance with the provisions of this section, section 28  
36 of this chapter, or section 32 of chapter 209 and until a judgment on the merits is rendered,  
37 absent emergency conditions, abuse or neglect, the parents shall have temporary shared legal and  
38 temporary shared physical custody of any minor child of the parents, but the judge may enter an  
39 order for temporary sole legal or sole physical custody for one parent if written findings are  
40 made that such shared custody would not be in the best interest of the child.

41           In determining whether temporary shared legal or temporary shared physical custody  
42 would not be in the best interest of the child, the court shall consider all relevant facts including,  
43 but not limited to, whether any member of the family has been the perpetrator of domestic  
44 violence, abuses alcohol or other drugs or has deserted the child.

45           If the court finds evidence of abuse, neglect or domestic violence as defined by section  
46 31A of chapter 208, section 38 of chapter 209, section 3 of chapter 209A, or section 10 of  
47 chapter 209C and issues a temporary or permanent custody order which does not grant shared  
48 physical custody, the court shall within 90 days enter written findings of fact as to the effects of  
49 the abuse on the child, which findings demonstrate that such order is in the furtherance of the  
50 child's best interests and provides for the safety and well-being of the child.

51           If the issue of custody is contested and either part seeks sole legal or physical custody,  
52 the burden of proof shall be on the moving party that such a custodial arrangement would be in  
53 the best interest of the child and the court shall provide written findings to support such a sole  
54 custody order.

55           The parties, jointly or individually, shall submit to the court at the custody hearing or trial  
56 a parenting plan. The court shall accept a completed parenting plan submitted and agreed upon  
57 by both parties, in the event that a parenting cannot be agreed upon by the parties, the court may

58 issue a parenting plan modifying a plan submitted by the parties. A parenting plan issued or  
59 accepted by the court shall become part of the judgment in the action together with any other  
60 appropriate custody orders and orders regarding the responsibility of the parties for the support  
61 of the child.

62 An award of shared legal or physical custody shall not affect a parent's responsibility for  
63 child support. An order of shared custody shall not constitute grounds for modifying a support  
64 order absent demonstrated economic impact that is an otherwise sufficient basis warranting  
65 modification.

66 The entry of an order of judgment relative to the custody of minor children shall not  
67 negate or impede the ability of the non-custodial parent to have access to the academic, medical,  
68 hospital or other health records of the child, as the non-custodial parent would have had if the  
69 custody order or judgment had not been entered; except, that if a court has issued an order to  
70 vacate against the non-custodial parent or an order prohibiting the non-custodial parent from  
71 imposing any restraint upon the personal liberty of the other parent or if nondisclosure of the  
72 present or prior address of the child or a party is necessary to ensure the health, safety or welfare  
73 of such child or party, the court may order that any part of such record pertaining to such address  
74 shall not be disclosed to such non-custodial parent.

75 Where the parents have reached an agreement providing for the custody of the children,  
76 the court will enter an order in accordance with such agreement, unless specific findings are  
77 made by the court indicating that such an order would not be in the best interests of the children.